

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KINGSTON-TERRILL WATER DISTRICT)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 95-460
)	
THE CITY OF RICHMOND, KENTUCKY, A)	
MUNICIPAL CORPORATION; AND THE)	
RICHMOND WATER, GAS, AND SEWAGE)	
WORKS)	
)	
DEFENDANTS)	

O R D E R

The parties have submitted for Commission review a settlement agreement which resolves all outstanding issues in this matter. Having reviewed the Settlement Agreement and finding that it affords a reasonable resolution of this matter, the Commission grants its approval and dismisses this proceeding.

Kingston-Terrill Water District ("Kingston-Terrill")¹ is a water district organized pursuant to KRS Chapter 74. It provides retail water service to approximately 1,754 customers in Madison County, Kentucky. Kingston-Terrill has no water production

¹ Since it filed its Complaint, Kingston-Terrill has merged with Waco Water District and White Hall Water District to form the Madison County Utility District. Madison County Utility District, not Kingston-Terrill, is a signatory to the Settlement Agreement, but has not moved to substitute itself as the Complainant. To avoid confusion, the Commission has continued to refer to the Complainant as Kingston-Terrill.

facilities but purchases its total water requirements from the Richmond Water, Gas and Sewerage Works ("Richmond") - a municipal utility.

In October 1995, Kingston-Terrill filed with the Commission a complaint against Richmond in which it alleged that Richmond's wholesale pricing practices threatened its ability to provide safe, potable water to its customers. More specifically, it alleged that: (1) over a 10 year period, Richmond had increased its wholesale water rates by 151.5 percent; (2) Richmond's bulk rate for water to its retail customers was only 78 percent of its wholesale bulk rate; (3) Richmond's wholesale rate was excessive and used to subsidize Richmond's retail rates; and (4) Richmond imposed excessive penalties on its wholesale customers for exceeding contract purchase limits. Kingston-Terrill requested revision of Richmond's wholesale water rates, revision of the limits upon Kingston-Terrill's purchases, and a refund of all excessive rates paid to Richmond within the last 10 years.

As a result of settlement negotiations lasting more than one year, the parties on October 6, 1997 submitted a Settlement Agreement, a copy of which is appended hereto, for Commission review. The Settlement Agreement resolves the parties' dispute over service territory and provides a mechanism for compensating Kingston-Terrill for the ceding of certain portions of its service territory. Under the Settlement Agreement, Richmond agrees to increase the maximum quantities which Kingston-Terrill may purchase monthly and to negotiate in good faith when further changes in purchase requirements are necessary. Richmond also agreed to restrictions upon any future increase to Richmond's wholesale rate. In exchange, Kingston-Terrill agreed to Richmond's recovery of the cost of any improvements which benefit the water district and

to enforce the collection of sewer charges which its customers owe to Richmond. Finally, each party agreed to arbitration procedures for any future dispute and to allow the other access to its financial records.

Having reviewed the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement strikes a reasonable compromise between the parties, is reasonable, in the public interest, and should be accepted. The Commission further finds that, consistent with KRS 278.160(2)² and Administrative Regulation 807 KAR 5:011, Section 13,³ Richmond should file a copy of the Settlement Agreement with the Commission.⁴

² KRS 278.160(2) states:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

³ Administrative Regulation 807 KAR 5:011, Section 13, states:

Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this regulation applicable to tariffs containing rates, rules and regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

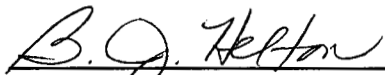
⁴ The Settlement Agreement contains provisions which specify the rates which Richmond must charge Kingston-Terrill for water service and several conditions under which such service must be provided. Under the provisions of Administrative Regulation 807 KAR 5:011, Section 13, it is a "special contract" and must be separately filed with the Commission as part of Richmond's filed rate schedules.

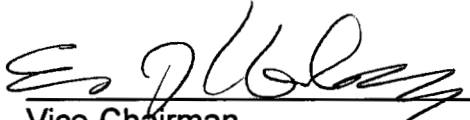
IT IS THEREFORE ORDERED that:

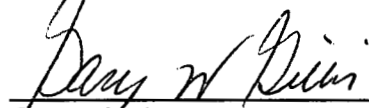
1. The parties' Settlement Agreement, appended hereto, is approved.
2. Kingston-Terrill's Complaint is dismissed with prejudice.
3. Richmond shall file a copy of the Settlement Agreement within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 7th day of January, 1998.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

A P P E N D I X

**AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 95-460 DATED JANUARY 7, 1998**

SETTLEMENT AGREEMENT AND CONTRACT
FOR SERVICE AND SALE OF WATER

THIS AGREEMENT is made and entered into the 26th day of September, 1997, between the RICHMOND WATER, GAS AND SEWERAGE WORKS, the city-owned Utility, which is governed by the RICHMOND UTILITIES BOARD, P. O. Box 700, Richmond, KY 40476, hereinafter referred to as the "CITY", and the MADISON COUNTY UTILITY DISTRICT, with offices located at 155 N. Kennesaw Dr., Richmond, KY 40475, hereinafter referred to as the "WATER DISTRICT".

W I T N E S S E T H:

WHEREAS, the Kingston Terrill Water District filed a suit in Madison Circuit Court against the City, claiming the right to serve property annexed into the City by City of Richmond Ordinance No. 94-04, which suit is Civil Action No. 96-CI-148;

WHEREAS, the Kingston Terrill Water District filed a Complaint with the Kentucky Public Service Commission, same being Case No. 95-460, challenging the rate charged by City for water sold to the Water District;

WHEREAS, the Kingston Terrill Water District merged with the Whitehall Water District and the Waco Water District to form the Madison County Utility Water District, and that Water District wishes to enter into this Contract on behalf of the merged county water districts;

WHEREAS, the Water District is organized and established under Chapter 74 of the Kentucky Revised Statutes, for the purpose of constructing and operating a water supply distribution system, and to accomplish this purpose, the Water District requires a supply of treated water; and

WHEREAS, the City owns and operates a water supply distribution system with a capacity currently capable of serving the present and planned customer base of the City system and supplying the volumes agreed upon in this contract to the Water District; and

WHEREAS, the parties have determined that it is in the best interests of their respective customers to resolve by agreement all matters that are now in litigation between the City and Kingston Terrill Water District;

WHEREAS, the parties have determined that it is in the best interests of their customers to enter into an agreement which clarifies which of the parties shall provide water in areas within the City limits;

WHEREAS, the parties agree that the terms herein will further the best interests of both the present and future customers of the Water District and the City;

NOW THEREFORE, the parties agree as follows:

Section I. SERVICE WITHIN PHASE 2 OF THE INDUSTRIAL PARK SOUTH.

1. The Water District hereby surrenders to the City any and all rights it may have to serve customers within Phase 2 of the Industrial Park South (that property annexed by the City by Ordinance 94-04).

2. The Water District agrees to dismiss with prejudice Madison Circuit Court Civil Action No. 96-CI-148.

3. The Water District agrees to petition the Madison County Judge Executive pursuant to KRS 74.110 to alter the boundaries of the Water District so as to delete Phase 2 of the Industrial Park South from the boundaries of the Water District.

4. In consideration therefore, the City shall pay to the Water District the sum of \$70,200.00, which sum shall be due and payable as follows:

a. Thirty-five Thousand One Hundred Dollars (\$35,100.00) shall be paid within thirty (30) days after all of the following events have occurred: i) the final action of the Madison County Judge Executive deleting Phase 2 of the Industrial Park South from the boundaries of the Water District; ii) the Farmers Home Administration written approval of this Agreement; and iii) Kentucky Public Service Commission approval of this Agreement; and

b. Thirty-five Thousand One Hundred Dollars (\$35,100.00) shall be paid within two hundred ten (210) days after all of the events specified in 4(a) above have occurred.

The parties agree that the City's obligation to pay the consideration herein shall be conditioned upon the actions of the Madison County Judge Executive, the Farmers Home Administration, and the Public Service Commission described in this Section.

Section 2: RELEASE OF WATER DISTRICT CUSTOMERS.

1. The City and the Water District desire to work together to further the best interests of the customers of the City and the Water District. The parties recognize that service by the City to the water customers who are in the City will assist the provision of adequate flows for fire protection. Further, the parties recognize that water service by the Water District makes billing for City sewer service difficult. Therefore, the parties agree

that the Water District will release from its territory all water customers who are located within the incorporated boundaries of the City, allowing the City to provide water service to them, except as follows:

a. The Water District may provide water service to those customers now in the City who are currently being served by the Water District (hereinafter referred to as "WD current customers"); and

b. The Water District may provide water service to new customers who are in the City limits, if those customers are within the territory of the Water District and receive sewer service from the County of Madison or a Madison County Sewer District; but the City shall provide water service to the customers who receive City sewer service.

2. The Water District shall be entitled to compensation for the release of water customers who are located in the territory of the Water District, which customers shall hereinafter be referred to as "WD released customer(s)". The compensation to be paid the Water District by the City shall be as follows:

a. The City shall pay to the Water District twenty-two cents (\$.22) for each 1000 gallons of water sold to each WD released customer, excluding sales for which the City does not receive payment.

b. Each month, on or before the 15th day of the month, the City shall remit payment to the Water District for sales to WD released customers for which the City has been paid during the preceding month.

c. For each WD released customer, the City shall continue to pay the Water District until the tenth anniversary after water is first sold by the City to the WD released customer.

Provided, however, no payment shall be made for a WD released customer until the Madison County Judge Executive alters the boundaries of the Water District to delete from those boundaries the area occupied by the WD released customer.

3. When the City begins providing water service to a new customer who is located in the territory of the Water District, the City shall in a writing to the Water District identify the customer. Within thirty (30) days after the receipt of any such notice from the City, the Water District may call a meeting of its governing body with the City Utilities Board for planning and informational purposes.

4. For purposes of this Agreement "territory of the Water District" shall mean that geographic territory described in the County Orders establishing the former County water districts.

5. The Water District may release WD current customers to the City. In which event, the City may provide service to such customers, with compensation being paid to the Water District in accordance with the foregoing provisions of this Section, after the Madison County Judge Executive alters the boundaries of the Water District to delete from those boundaries the area occupied by the WD current customers who are being released. If the Water District wishes to release to the City a WD current customer, then the Water District shall in a writing to the City identify the customer. Within thirty (30) days after receipt of any such notice from the Water District, the City may call a meeting of its Utilities Board with the governing body for the Water District for planning and informational purposes.

SECTION III. SALE OF WATER TO THE WATER DISTRICT.

Pending rate Case No. 95-460 with the Kentucky Public Service Commission shall be dismissed by the Water District with prejudice.

1. The City Agrees:

a. Quality. To furnish the Water District at the point(s) of delivery specified on the attached Exhibit A, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Division of Water, Commonwealth of Kentucky, in the quantities specified in Paragraph 1(b) of Section III of this Agreement. The parties agree to coordinate the flushing of lines, and the City shall promptly notify the Water District of any line breaks which might affect the quality of water delivered to it by the City;

b. Quantity. To furnish the Water District at the point(s) of delivery the volumes indicated on the attached Exhibit A, as it is may be amended from time to time as hereinafter provided. During the term of this agreement, if the Water District determines that its average monthly usage may exceed the volumes indicated on the attached Exhibit A, then Water District and the City shall negotiate in good faith to revise the volume limit. Factors to be taken into consideration in such negotiations include, but are not limited to, the following: the amount of the City's reserve capacity; the growth in water use by the Water District's customers; the growth in water use by the City's retail customers and the customers of other wholesalers;

c. Pressure. To furnish water at a reasonably constant pressure equal to the normal operating pressure of the City system. If a greater pressure than that normally available at

the point(s) of delivery is required by the Water District, and the City can provide that greater pressure without extra cost to the City, then the water will be furnished at such greater pressure at no extra cost to Water District. But if the Water District requires greater pressure than normally available at the point(s) of delivery, and the City cannot provide that greater pressure without extra cost, then the cost of providing such greater pressure shall be borne by the Water District. Emergency failures of pressure or supply due to main supply line breaks, power failure, drought, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the City from this provision for such reasonable period of time as may be necessary to restore pressure and/or service. In such event, cut offs from service by the City shall be made on an equitable basis for customers of the City and the Water District, to the extent possible, given the lay out of the delivery system and the circumstances creating the shortage;

c. Billing Procedure. To furnish the Water District with an itemized statement of the amount of water furnished the Water District during each preceding month; and

d. Deduct Meter. Within six months from the date of this Agreement, to install such City lines as may be required to eliminate the need for the Water District to resell water to the City through a deduct meter.

2. The Water District Agrees:

a. Rates and Payment Date. To pay the City, not later than the 15th day of each month, for water delivered at the rate now in effect for wholesalers (\$1.50 per 100 cubic feet);

b. Pending rate Case No. 95-460. To seek the dismissal with prejudice of Kentucky Public Service Commission Rate Case No. 95-46. The Water District agrees that it will not challenge at the Public Service Commission or in any other forum payment of the wholesale rate (\$1.50 per 100 cubic feet) for water or its classification in the City's rate structure as a wholesaler; Further, the Water District acknowledges that from time to time during the term of this Agreement the City may need to adjust the rate which the Water District pays for water or the City may need to establish other charges to be paid by the Water District to recover the cost of capital improvements. The City agrees that it will not propose any increases in the rate the Water District pays for water, until the City increases its Institutional Rate from \$1.27 to \$1.50. Further, after the City's Institutional Rate reaches \$1.50, the Institutional Rate and the Wholesale Rate that the Water District pays shall be one and the same rate. Provided, however, nothing contained in this provision shall in any way limit the City's ability to assess rates or charges against the Water District, to recover the cost of improvements made by the City in

the Water District's territory for the benefit of the Water District.

3. Future Disputes. If questions arise in the future regarding the appropriateness of rates or other charges assessed to the Water District, or regarding territorial boundaries, the City and the Water District agree to attempt to resolve the future questions without litigation, by following the procedures outlined below:

a. The City and the Water District shall each provide the other with such financial data or other data as may be relevant to the proposed rate or charge, or other issue in question;

b. The City and the Water District agree to send representatives to joint meetings to review data and discuss proposed rates and charges, or other issues;

c. If within sixty days after the date the rate or charge was first proposed, or such other question as may arise first does so, the City and the Water District are unable to reach an agreement, then the question shall be presented to mediation in accordance with the rules of the American Arbitration Association.

4. Source of Water Purchases. During the term of this Agreement, City shall be Water District's only source of water supply for the volumes listed on the attached Exhibit A, as it may be amended from time to time. The Water District acknowledges that the City has expended sums for capital improvements to create the capacity needed to supply water to the Water District hereunder;

5. Metering Equipment. The Water District agrees to furnish, install, and maintain at its own expense at point(s) of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the City. All such equipment shall be owned by the Water District. The meters used by the Water District shall meet AWWA standards and shall be approved prior to installation by the City. The Water District agrees to calibrate such metering equipment whenever requested by the City, but not more frequently than once every twelve (12) months. The calibration shall be done by a Public Service Commission certified testing service. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be 110% of the amount of water delivered in the corresponding period immediately prior to the failure, unless the City and the Water District shall agree upon a different amount. The metering

equipment shall be read by the City on regularly scheduled dates in the presence of a representative for the Water District. Advance notice shall be given to the Water District by the City of the time and date for reading the Water District's meters.

6. Sewer Charge Collection Enforcement. The Water District agrees to furnish to the City on or before the 20th day of each month, the volumes of water used in the prior month by each of the Water District's customers who are users of the City of Richmond's sewer facilities. The volumes shall be furnished on a per customer basis, to enable billing by the municipal sewer for use of the sewer facilities. Further, the Water District agrees to discontinue water service to any person who is delinquent in paying city sewer charges within five (5) days after receipt of written notice of the delinquency from the City.

SECTION 4. MISCELLANEOUS

1. Term of Contract. That this contract shall extend for a term beginning with the date of the execution of this contract by both parties and ending on the same date twenty years from hence in the year 2017.

2. Effective Date. This Agreement shall become effective upon approval of the Kentucky Public Service Commission and the Farmers Home Administration. If such approvals are not obtained within ninety (90) days from the date of this Agreement, then the City and the Water District are relieved from any obligations hereunder.

3. Successor to the Water District. In the event of any occurrence rendering the Water District incapable of performing under this contract, any successor of the Water District, whether the result of legal process, assignment, merger or otherwise, shall succeed to the rights and obligations of the Water District hereunder.

4. Prior Contracts. This Agreement supersedes all water purchase contracts entered into by and between the City and any one of more of the three former water districts: Kingston Terrill Water District, Whitehall Water District, and Waco Water District. Such prior contracts shall be of no force and effect when this contract becomes effective in accordance with the provisions of paragraph 2 of Section IV.

5. Waiver. No failure on the part of the City in exercising any power or right hereunder including, but not limited to the right to sell no more than the volume limit established on the attached Exhibit A, as that limit may be amended from time to time, shall operate as a waiver or modification of the right or power. No custom or practice of the parties at variance with the terms

hereof shall constitute a waiver of the City's right to demand compliance with the terms hereof.

6. Governing Law. This contract and the rights and obligations of the parties hereto shall be governed by the laws of the Commonwealth of Kentucky.

7. Customer Notice. Customer notice shall be given in compliance with 807 KAR 5:0001 sec. 10(3) and (4).

8. Entire Agreement. The full and entire agreement between the parties hereto is contained in this writing.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies and by and through their authorized agents, have caused this contract to be duly executed in triplicate, each of which shall constitute an original, on the dates indicated in the acknowledgments below.

CITY OF RICHMOND:

BY: George Ridings
GEORGE RIDINGS
Chairman
Richmond Utilities Board

MADISON COUNTY UTILITY
DISTRICT

BY: Ronald J. Ginter (Chairman)

ATTEST:

Nancy Pennington (Secretary)

STATE OF KENTUCKY)
) SCT.
COUNTY OF MADISON)

SUBSCRIBED AND SWORN TO before me by GEORGE RIDINGS, Chairman, Richmond Utilities Board, this 26th day of September, 1997.

My commission expires: 7/14/01

N. J. Bate
NOTARY PUBLIC
KENTUCKY STATE AT LARGE

STATE OF KENTUCKY)
)
COUNTY OF MADISON) SCT.

SUBSCRIBED AND SWORN TO before me by Ronald Lee Ginter
on behalf of the MADISON COUNTY UTILITY DISTRICT, this 14 day of
October, 1997.

My commission expires: 9 1 9 1 00

Samuel S. Reynolds
NOTARY PUBLIC
KENTUCKY STATE AT LARGE

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95-460

EXHIBIT A

20.8679 MG/MO

RECEIVED

DEC - 5 1997

PUBLIC SERVICE
COMMISSION